



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JAMES GOODALL, JR.,

Petitioner,

vs.

STATE OF NEVADA, *et al.*,

Respondents.

3:07-CV-0629-ECR-RAM

**ORDER**

This is a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondents have moved to dismiss the petition on the bases of exhaustion and procedural default (docket #25). After multiple extensions of time to offer his response or opposition to the motion to dismiss, petitioner filed a motion for stay and abeyance (docket #32) of the petition. Respondents have opposed that motion (docket # 33) and petitioner has not filed a reply, although the time for doing so has expired.

The motion to dismiss shall be granted and the motion for stay and abeyance shall be denied.

1 Respondents' motion to dismiss relies on two theories: (1) that Ground One<sup>1</sup> of the  
2 petition is unexhausted, and (2) that Grounds Two and Three are procedurally defaulted. Petitioner  
3 has not argued that Ground One is exhausted, and by his motion for stay and abeyance, appears to  
4 conceded that it is not. Neither has he addressed the issue of procedural default, failing to make any  
5 attempt to argue against the default of to provide a showing of cause and prejudice to overcome such  
6 a default, if it exists. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991).

7 Under the Local Rules of Civil Procedure, Rule 7-2, failure of a party to present  
8 points and authorities in opposition to a motion "shall constitute a consent to the granting of the  
9 motion." Thus, the motion to dismiss shall be granted for petitioner's failure to oppose dismissal.

10 As for petitioner's motion for stay and abeyance, the court finds it insufficient to  
11 warrant the requested relief. First, although petitioner recognizes the role of *Rhines v. Weber*, 544  
12 U.S. 269 (2005), in the context of exhaustion and stay and abeyance, he has completely failed to  
13 address the points *Rhines* identifies as requisite to obtaining such a stay. *Rhines* cautioned that a  
14 stay-and-abeyance "should be available only in limited circumstances," and is appropriate only when  
15 the district court determines that there was "good cause" for the failure to exhaust and where the  
16 court finds that the claims are not clearly meritless. *Id.* at 278. Thus, it is incumbent upon the  
17 petitioner to demonstrate to the court that he has good cause for his failure to exhaust and that he  
18 claims merit review. In this instance, despite having this obligation highlighted by respondents,  
19 petitioner did not take the opportunity to provide such argument in a reply brief. Moreover, a review  
20 of the unexhausted claim, Ground One, supports a finding that the claim is meritless. There is no  
21 constitutional requirement that a state court appoint counsel to assist a petitioner in any post-  
22 conviction review. *Coleman*, 501 U.S. at 752; *Johnson v. Avery*, 393 U.S. 483, 488 (1969). Thus,  
23 there is no constitutional violation presented in this claim warranting this court's review.

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25 <sup>1</sup> It is of note that respondents' argument against Ground One is more rightly focused on it lack  
26 of viability as a federal constitutional claim. The claim argues that petitioner's rights to due process and  
equal protection were violated because the state district court failed to appoint him counsel to assist him  
with his state post-conviction habeas petition and failed to conduct an evidentiary hearing in order to  
allow him to develop the facts to support his claims. See Petition (docket #9), pp. 4-6.

**IT IS THEREFORE ORDERED** that the motion to dismiss (docket #25) is **GRANTED**.

The Clerk shall enter judgment accordingly.

Edward C. Rios.  
UNITED STATES DISTRICT JUDGE